THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO. 11039 of 1998

DATED: 13.06.2007

Between:-

K.C.Narayana s/o K. Seshaiah, aged about 47 years, R/o Proddatur, Cuddapah District.

..PETITIONER

And

The Managing Director, APSRTC, Musheerabad, Hyderabad and two others.

…RESPONDENTS

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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O R D E R

Questioning the proceedings of the Regional Manager, dated 18.11.1997, the present writ petition is filed.

Petitioner a conductor in A.P.S.R.T.C., alleged to have driven the bus unauthorisedly on 13.12.1975 resulting in an accident, was removed from service. The appeal preferred by him was rejected by the Regional Manager and thereafter he preferred a Review Petition to the Chief Traffic Manager. The Chief Traffic Manager, in his proceedings dated 18.11.1977, appointed him as a conductor afresh. Aggrieved thereby, the petitioner filed a revision to the 1st respondent on 06-03-1981, but his revision was rejected by the 1st respondent by proceedings dated 16.10.1981. Aggrieved thereby he filed W.P. No. 24155 of 1996 and this Court by order dated 14.11.1996 held that the reasons given by the Reviewing Authority, in dismissing the Review Application, was not correct and that as a matter of fact the petitioner was dismissed from service as he was driving an A.P.S.R.T.C. Bus without any valid license. This Court directed the authority to consider the case of the petitioner on merits by looking into the entire record,

within a period of two months.

Pursuant to the directions of this Court the 2nd respondent, vide proceedings dated 18-11-1997, upheld the order of the Reviewing Authority in appointing the petitioner afresh. The 2nd respondent held that the petitioner had driven the bus unauthorisedly and that the Reviewing Authority was very considerate in appointing him afresh into the service of the Corporation so as to give him an opportunity to serve the Corporation by following the rules and regulations laid down by the Corporation while performing his duties in future. The 2nd respondent held that, at this distant date, he did not find any valid reasons to consider the decision of the In-charge Chief Traffic Manager with regards the appointment of the petitioner as a conductor afresh. With regards the petitioner's contention that the Regulations did not permit such punishment, "of being appointed afresh, being imposed, the 2nd respondent held that the Circular dated 22.09.1995 was issued by the Vice Chairman and Managing Director after pronouncement of the order of the Division Bench of this Court in W.A. No. 955 of 1987 reported in 1995 (1) ALT 553 in which it was held that the order passed by the Reviewing Authority directing the appointment of the petitioner afresh as a Conductor cannot be treated as an order passed in modification of the punishment imposed and that the employee was not entitled to the benefits of his past service and that, in view of the latest position, the orders passed by the Reviewing

Authority appointing the petitioner afresh becomes valid and did not warrant any consideration at this stage.

Sri Shaik Ansar Khaja Mynoddin, learned counsel for the petitioner, would submit that since the appellate and the reviewing authority had failed to adhere to the statutory rules governing employees of the Corporation, and as the statutory rules did not provide for imposition of the punishment of appointment afresh as a conductor, no such punishment could have been imposed.

Sri T. Vinayaka Swamy, learned Standing Counsel for the A.P.S.R.T.C, on the other hand, would place reliance on **G. SAMBASIVA RAO V. A.P. STATE ROAD TRANSPORT CORPORATION, HYDERABAD**[1] and **J.K. SYNTHETICS LTD. V. K.P. AGRAWAL AND ANOTHER**[2]**.** Learned counsel would contend that since the Reviewing Authority had held that the punishment imposed was proportionate and had directed appointment of the petitioner afresh, taking a compassionate view, it was not open to the petitioner to contend that his punishment was contrary to the statutory rules.

Since the question raised in this writ petition, whether a punishment not prescribed under the statutory regulations could be imposed on a delinquent employee, is a matter which would affect a large number of employees, at the request of this Court, Sri

M.Panduranga Rao, learned counsel appeared as *amicus curiae.* Learned counsel would submit that the judgment of this Court in **G. Sambasiva Rao**[1] was no longer good law in view of the later judgment of the Supreme Court in **STATE BANK OF INDIA AND OTHERS V. T.J. PAUL**[3]**.** Learned counsel would submit that since the Regulations governing employees of the A.P.S.R.T.C., are statutory in nature, the competent authority, while exercising the quasi judicial powers conferred on him under the statutory rules, was required to strictly adhere to the statutory rules and, since the nature of punishment to be imposed has been specifically enumerated therein, it was not open to the disciplinary/ appellate/reviewing authorities to deviate therefrom or to impose a punishment not specifically provided for under the statutory regulations.

Before examining the aforesaid contentions, it is necessary to take note of the relevant statutory rules in this regard. The A.P.S.R.T.C. Employees (Classification, Control and Appeal) Regulations, 1967 were made by the Corporation, after obtaining previous sanction of the Government of Andhra Pradesh under Section 45(1) of the Road Transport Corporations Act, 1950, was later approved by the Corporation in Resolution No. 172/1959, dated 29th September, 1959 and was notified in G.O.Ms.No.1566, dated 16-09-1967. These regulations are statutory in character. Part-IV of these Regulations relate to discipline – penalties and Regulation-8 which

prescribes the penalties reads thus:

(1) The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon an employee namely:-

(i) censure;

(ii) withholding of the privilege of free passes or privilege ticket orders or both for travel on the railway or the bus services of the Corporation, as the case may be, in the case of employees to whom such privilege or privileges are admissible;

(iii) fine, in the case of persons for whom such penalty is permissible under these Regulations, vide sub-clause (3);

(iv) withholding of increments;

(v) recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by an employee's negligence or breach of orders;

(vi) suspension, where a person has already been suspended under regulation 18 pending enquiry into his conduct, to the extent considered necessary by the authority imposing the penalty;

(vii) reduction to a lower rank in the seniority list or to a lower post or time-scale, whether in the same class of service or in another class, or to a lower stage in a time-scale;

(viii) removal from the service of the Corporation which does not disqualify from future employment.

(ix) Dismissal from the service of the Corporation which ordinarily disqualifies from future employment.

Explanation:-- The following shall not amount to a penalty with the meaning of the Regulation:

(1) withholding of increments of an employee for failure to pass a departmental examination or to qualify in certain duties or subjects in accordance with the regulations or orders governing the service or post or terms of his appointment.

(2) Stoppage of an employee at the efficiency bar in the time scale on the ground of his unfitness to cross the bar.

(3) Reversion to a lower service, grade or post of an employee officiating in a higher service, grade or post on the ground that he is considered, after trail, to be unsuitable for such higher service, grade or post or on administrative grounds unconnected with his conduct.

(4) Reversion to his permanent service, grade or post of an employee appointed on probation to another service, grade or

post, during or at the end of the period of probation in accordance with the terms of his appointment or the regulations or resolution governing probation.

(5) Termination of the services:-

(a) of an employee appointed on probation during or at the end of the period of probation, in accordance with the terms of his appointment or the regulations or resolution governing probation; or

(b) of an employee in accordance with the general conditions of service applicable to permanent or temporary employment, as the case may be; or

(c) of an employee engaged under an agreement in accordance with the terms of such agreement; or

(d) for reasons of mental or physical incapacity duly certified by a medical officer specified by the Corporation in that behalf.

(2) The penalty of withholding or forfeiture of the privilege of free passes or privilege ticket orders shall be imposed only in connection with an abuse of the particular privilege and shall not be imposed as an alternative to any other penalty, e.g., reduction of pay. It may however be imposed in addition to any other penalty which may be inflicted in respect of the same act or omission on the part of an employee.

(3) The penalty of fine as such shall not be imposed on an employee in the Class I or Class II Services.

(4) The penalty of withholding of promotion may be imposed in addition to any of the other penalties that may be imposed in respect of the same act or omission on the part of an employee.

(5) The penalty of recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by an employee's negligence or breach of orders, may be imposed in addition to any other penalty which may be inflicted in respect of the same act of negligence or breach of orders.

It is clear therefrom that the penalties which may, for good and sufficient reason, be imposed upon an employee are those enumerated in Regulation 8(1). Regulation 9 details the circumstances under which the penalties may be imposed and Regulation-10 the authorities competent to impose penalties. That the punishment of "appointment afresh" is not one among the enumerated

penalties is not in dispute.

The 2nd respondent has, in the impugned order, placed reliance on a Division Bench judgment of this Court in **P. HABEEB SAHEB V. ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION, REP. BY ITS MANAGING DIRECTOR, HYDERABAD AND OTHERS**[4]**.** In the said case the conductor was found guilty of the charges, was initially imposed the punishment of removal from service which was confirmed in appeal. The reviewing authority, on a revision petition filed by the employee concerned, modified the order of punishment and appointed him as a conductor afresh. The Division Bench observed:

> "……The order passed by the Regional Manager consists of two parts. The first part relates to the confirmation of the order of removal. The second part relates to a direction for appointment as a fresh candidate. The order of removal is no bar for appointment as a fresh candidate. The Regional Manager has clearly stated that on compassionate grounds, a direction has been issued to appoint the employee as a fresh candidate. So long as the order of punishment stands, it cannot be said that the reviewing authority had either modified the order of punishment or in any other way interfered with it. So long as the order of removal stands, question of claiming the benefit of his past service because of his appointment as a fresh candidate will not arise. In those circumstances, the decisions relied on by the learned counsel have no application to the facts of this case. For the aforementioned reasons, we do not see any reason to interfere with the order passed by the learned single Judge."

In the said case, while noting that the order of punishment of

removal from service was confirmed in revision, the Division Bench held that as long as the order of removal stands, it could not said that the reviewing authority had either modified the order of punishment or in any other way interfered with it.

In **J.K.Synthetics Ltd. V. K.P. Agrawal**[2] relied upon by Sri P. Vinayaka Swamy, learning Standing Counsel, the question, which came up for consideration before the Supreme Court, was the scope of the Section 11-A of the Industrial Disputes Act and the extent to which the Labour Court could interfere with the punishment imposed for proved misconduct. It was in this context that the Supreme Court observed that, though Section 11-A gives jurisdiction and power to the Labour Court to interfere with the quantum of punishment, the discretion had to be used judiciously and not capriciously and that a harsh punishment wholly disproportionate to the charge should be the criterion for interference. The Supreme Court further held that in the absence of a finding that the punishment was shockingly disproportionate to the gravity of the charge established, the Labour Court should not interfere with the punishment.

The said judgment has no application to the facts of the present case. The present writ petition is not against an award of the Labour Court nor is the scope of Section 11-A of the Industrial Disputes Act under consideration in the present writ petition. I n **G.Sambasiva Rao**[1] S.R. Nayak, J., (as he then was) examined the A.P.S.R.T.C.

Regulations and, after elaborate examination of the entire case law, observed:-

> "……..Now let me advert to Regulation 27 of C.C.A. Regulations which deals with the duties of an Appellate Authority. Clause © of Regulation 27(1) mandates that the Appellate Authority shall consider whether the penalty imposed is excessive, adequate or inadequate; and after such consideration, shall pass orders setting aside, reducing, confirming or enhancing the penalty. Therefore, the Appellate Authority is charged with a duty to examine whether the penalty imposed by the Disciplinary Authority is excessive, adequate or inadequate and after application of mind and consideration of all relevant materials and evidence, if it finds that the penalty is excessive, it is armed with necessary power to reduce the penalty. The terms 'excessive' 'adequate' or 'inadequate' are relative terms in value, space, place and time, and, therefore, the question whether the penalty imposed by the Disciplinary Authority is excessive, adequate or inadequate has to be decided having regard to the facts and circumstances of each case. What is considered to be adequate penalty in a given set of circumstances may be excessive penalty in another set of facts and circumstances. Therefore, standardization is not permissible while exercising discretionary power. <u>If the Appellate Authority acting under Regulation 27 of C.C.A. Regulations, after due consideration of facts and circumstances of the case and application of mind, thinks that "X" penalty is an adequate and reasonable penalty and the penalty imposed by the Disciplinary Authority is excessive, should he be deprived of the power to substitute "X" penalty in the place of the penalty imposed by the Disciplinary Authority only on the ground that "X" penalty is not one of the specified penalties under Regulation 8(1)? For the same reasons stated by me supra, the Appellate Authority has power to impose "X" penalty provided "X" penalty in the facts and circumstances of the case is found by the Court to be a fair and adequate penalty. If it is held otherwise, the essence of discretionary power vested in the Appellate Authority to</u>

choose an adequate penalty will be lost. Therefore, I hold that it is permissible for an Appellate Authority under Regulation 27 of C.C.A. Regulations to impose even a non-specified penalty in substitution of the specified penalty imposed by the Disciplinary Authority provided such penalty is the one which falls between the minimum and the maximum penalty enumerated in Regulation 8(1) of C.C.A. Regulations.

In the light of the principles referred to above and construction of the Regulations, now let me deal with the concrete facts of this case and the decisions on which the learned counsel for the petitioner placed reliance. The Appellate Authority to use his own language held that "all the charges are proved beyond reasonable doubt and the Depot Manager (Disciplinary Authority) is justified in removing the appellate from the rolls of Corporation." Therefore, it is manifestly clear that the Appellate Authority concurred with the findings of fact recorded by the Disciplinary Authority and also approved the quantum of punishment imposed by the Disciplinary Authority. The Appellate Authority having recorded such satisfaction, however, directed reinstatement of the workman into service in the minimum scale of pay of conductor on the ground that the Traffic Inspector who gave scope for the petitioner to defraud the revenues of the Corporation was let off and taking lenient view. The observations of the Appellate Authority reflect that he directed reinstatement of the petitioner into service on compassionate grounds and not on merits. In similar facts-situation, a Division Bench of this Court in *P.Habeeb Saheb v. Andhra Pradesh State Road Transport Corporation (4) 1995 (4) SLR 303* speaking through A.Lakshmana Rao, J., as he then was construed a similar order made by the Regional Manager of the A.P.S.R.T.C. in a review petition filed by the delinquent therein to be a composite order consisting of two parts. In that case the reviewing authority after recording the satisfaction that there was no need to interfere with the orders of the Depot Manager-Disciplinary Authority, but on compassionate grounds and taking a lenient view directed the Depot Manager to appoint the delinquent as Conductor afresh. The argument of the learned counsel

for the delinquent in that case was that the direction of the reviewing authority to appoint the delinquent as Conductor afresh was a modified punishment and that modified punishment is not one of the punishments contemplated under Regulation 8 of C.C.A. Regulations and therefore, the same could not be sustained in law. The Division Bench while rejecting that argument pointed out that the order passed by the reviewing authority consisted of two parts, namely, the first part related to the confirmation of the order of removal passed by the Disciplinary Authority and the second part related to a direction for appointment as a fresh candidate. The Division Bench also pointed out that the order of removal passed by the Disciplinary Authority was no bar for appointment of the delinquent as a fresh candidate. The opinion expressed by the Division Bench squarely covers the facts of this case also. Another judgment of the Division Bench of this Court in *K.Dayanand v. The Depot Manager, APSRTC (5) 1993 (1) ALT 164 (DB*) also clearly indicates that the Appellate Authority can pass a composite order consisting of two parts; one part affirming the decision of the Disciplinary Authority and the other directing fresh appointment of the delinquent on compassionate ground.……

……..The submission of the learned Standing Counsel for the Corporation that even assuming that the order passed by the Appellate Authority is a modified punishment even then that modified punishment squarely falls within the punishment enumerated in Clause (vii) of Regulation 8(1) of C.C.A. Regulations is well-founded. <u>The effect of the order made by the Appellate Authority is that the delinquent is entitled to be reinstated into service in the minimum scale of pay of Conductor. Clause (vii) of Regulation 8(1), among other things, provides for imposition of a penalty of reduction “to a lower stage in time scale.” The delinquent, by virtue of the order of the Appellate Authority, is required to be reinstated into service in the time scale of Conductors but he has to be placed in the lowest stage in the same time scale of Conductor. In other words the effect of the order of the Appellate Authority is to reduce the petitioner from a higher stage to a lower stage in the time scale of</u>

Conductors and that penalty falls within the penalty specified in Clause (vii) of Regulation 8(1) of C.C.A. Regulations…….." (emphasis supplied)

In the aforesaid case, a conductor of the A.P.S.R.T.C. was initially imposed punishment of removal from service and the appellate authority, while setting aside the order of removal, had directed that he be reinstated and posted to Macherla Depot to work for five years and awarded him the punishment of being placed in the minimum scale of conductor. While holding that the appellate authority had the discretion to impose even a non-specified penalty in substitution of the specified penalty imposed by the Disciplinary Authority provided such penalty was one which fell between the minimum and maximum penalty enumerated in Regulation 8(1) of C.C.A. Regulations, the learned Judge held that the punishment imposed fell within Clause (vii) of Regulation 8(1) of C.C.A. Regulations.

I am unable to agree with the observations that the appellate authority, in exercise of the powers under Regulation 27, has the discretion to impose even a non-specified penalty provided it falls within the minimum and maximum penalty specified in the regulations. It is well settled that statutory authorities must exercise their powers strictly in accordance with the statute or the statutory rules and that exercise of power contrary thereto would be ultravires and illegal. Exercise of discretion can only be in accordance with law and unbridled and unfettered discretion would fall foul of the equality

clauses under Articles 14 and 16 of the Constitution. This question, however, does not necessitate further examination, as the learned Judge has also held that the punishment imposed fell within the enumerated punishments under Regulation-8.

It is also necessary to note that, unlike **G.Sambasiva Rao**[1], in the present case, the petitioner has been appointed as a conductor afresh. It cannot be said that he has been imposed the punishment under Regulation 8 (vii), of being placed in the beginning of the time scale in a lower stage, for the consequences of a punishment under Regulation 8 (vii) would only be reduction in the emoluments of the employee and he would, however, be entitled to continue to remain in the same position in the seniority list which he held before. On the other hand, the consequence of the punishment of "being appointed afresh" would not only deprive the petitioner of increments which he had drawn earlier, it would also result in his being placed below those who were appointed as conductors prior to the date, on which the punishment was imposed. The judgment in **G.Sambasiva Rao**[1], has no application to the facts of the present case and is, therefore, of no assistance to the respondents herein.

In **T.J.Paul**[3] while the punishment imposed initially was that of dismissal from service the appellate authority had modified the punishment to that of removal from service. The rules of the Bank of Cochin, wherein the respondent was employed, did not provide for

removal of service, as one of the punishment, which could be imposed for proved misconduct. In this context, the Supreme Court observed thus:

> "…….But this does not conclude the matter. The learned senior counsel for the respondent Sri P.P. Rao is right in contending that the appellate authority, once it came to the conclusion that the punishment of dismissal was not warranted in the facts of the case, it could not have awarded the punishment of 'removal' which was not one of the enumerated penalties under para 22(v) of the Rules. In fact, the learned single Judge also adverted to this aspect. If one reads the order of the appellate authority, it is clear that the said authority went by Rule 49(g) of the State Bank of India (supervising Staff) Service Rules which admittedly, is not applicable to charges pertaining to the period 1977-1981 when the Rules of Cochin Bank applied. The amalgamation of the Bank of Cochin with the State Bank of India took place only on 27.4.85. It may be that the Rules of the State Bank of India provided for a punishment of removal, but in the Rules relating to penalties for 'major misconduct' in para 22(v) of the Rules applicable to the employees of the Bank of Cochin, removal is not one of the enumerated punishments which could be imposed. The said punishment is not the same thing as "condoning misconduct and merely discharging from service" as provided in para 22(v)(e) of the said Rules.
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> Learned senior counsel for the appellants Sri T.R.Andhyarujina tried to submit that if the appellate authority decided not to dismiss the respondent, it still had inherent power to award a punishment of 'removal', which was lesser in severity. Learned senior counsel contended that the discretion of the authorities to award such an appropriate punishment could not be interfered with in view of the decision of this Court *in Union of India v. G. Ganayutham, (AIR 1997 SC 3387 : 1997 AIR SCW 3464 : 1997 Lab IC 3341) : (1997) 7 SCC 463*. In our view, this decision is not applicable to the facts of the case. Here the Court is not interfering with the punishment awarded by the employer on the ground that in the opinion of the

> Court the punishment awarded is disproportionate to the gravity of the misconduct. Here, the gradation of the punishments has been fixed by the rules themselves, namely, the Rules of the Bank of Cochin and the Court is merely insisting that the authority is confined to the limits of its discretion as restricted by the Rules. Inasmuch as the Rules of the Bank of Cochin have enumerated and listed out the punishments for 'major misconduct', we are of the view that the punishment of 'removal' could not have been imposed by the appellate authority and all that was permissible for the Bank was to confine itself to one or the other punishments for major misconduct enumerated in para 22(v) of the rules, other than dismissal without notice. This conclusion of ours also requires the setting aside of the punishment of 'removal' that was awarded by the appellate authority. Now the other punishments enumerated under para 22(v) are 'warning or censure or adverse remark being entered, or fine; or stoppage of increments/reduction of basic pay or to condone the misconduct and merely discharge from service. The setting aside of the removal by the High Court and the relief of consequential benefits is thus sustained. The matter has, therefore, to go back to the appellate authority for considering imposition of one of the other punishment in para 22(v) other than dismissal without notice……..." (emphasis supplied)

In view of the judgment of the Supreme Court in **T.J.Paul**[3], the earlier judgments of this Court taking a contrary view must be held no longer as good law and as a result the impugned order of the reviewing authority, appointing the petitioner as a conductor afresh, must necessarily be set aside and the matter remanded to the 2nd respondent for his consideration on the question of penalty.

The impugned order of the 2nd respondent is, accordingly, set aside and he is directed to examine the records and determine the

appropriate punishment to be imposed on the petitioner strictly in accordance with the A.P.S.R.T.C. Employees (Classification, Control and Appeal) Regulations, 1967, within a period of four months from the date of receipt of a copy of this Court. Needless to state that, since the petitioner has been continuing pursuant to the earlier order of the Reviewing Authority to appoint him afresh as a Conductor, status quo as on today shall continue till final orders are passed by the 2nd respondent on the punishment to be imposed on the petitioner herein.

The writ petition is, accordingly, disposed of. No costs.

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RAMESH RANGANATHAN, J

Dated: 13-06-2007
vp

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[1] 1997 (1) ALD 451

[2] (2007) 2 S.C.C. 433

[3] AIR 1999 S.C. 1994

[4] 1995(1) ALT 553 (DB)